



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0824]

RIN 1625-AA00

Safety Zone; Dredging, Shark River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change of effective period.

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**SUMMARY:** The Coast Guard is extending the effective period for the temporary safety zone on a portion of Shark River, in Neptune City, NJ. That temporary regulation was set to expire September 30, 2016. Extending the effective period for this safety zone provides continued and uninterrupted protection for the dredge operations and for the safety of life on navigable waters during dredging operations.

**DATES:** This rule is effective September 30, 2016. Effective September 30, 2016, the effective period for § 165.T05-0824, added at 81 FR 59484, August 30, 2016, effective from September 1, 2016, through September 30, 2016, is extended through October 31, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to, type USCG-2016-0824 in the "SEARCH" box and click "SEARCH."

Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Marine Science Technician First Class Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271-4889, e-mail Tom.J.Simkins@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background Information and Regulatory History**

Efforts to dredge the Shark River have been underway for well over a decade. After Superstorm Sandy the need to dredge the river increased significantly due to sediment deposited by the storm, which impeded navigation within those channels. Funding issues and concerns over dewatering locations (locations to dry the dredged materials) have historically stalled the progress of this project.

Mobile Dredging and Pumping Co. have been awarded the contract to restore the state channels to allow safe passage for recreational and commercial traffic. The project requires dredging approximately 102,000 cubic yards of sediment comprised of sand and silt. The sediment will be hydraulically dredged and piped via a secure welded pipeline to the selected dewatering locations.

The purpose of this rule is to promote maritime safety and protect vessels from the hazards of dredge piping and dredge operations. The rule will temporarily restrict

vessel traffic from transiting a portion of the Shark River while dredging operations are being conducted in the main navigational channel.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event, specifying the need for the dredging operation to continue from October 1, 2016 through October 31, 2016, were not received by the Coast Guard until September 15, 2016. It is impracticable to publish an NPRM because we must establish this safety zone October 1, 2016. Failing to extend the effective dates for this rule pending completion of notice and comment rulemaking is impracticable and contrary to the public interest because it would cause a gap in the ability to enforce the needed safety zone. The dredge and dredge piping are positioned in the main navigational channel in order for the dredging company to complete the proper dredging of the main navigational channel. Allowing this event to continue without a safety zone in place would expose mariners and the public to unnecessary dangers associated with dredge piping and dredge operations. Therefore, it is imperative that the safety zone restricting traffic in this portion of the Shark River, in Neptune City, NJ remain in place.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the

**Federal Register** for the reasons stated above. The Coast Guard expects that there will be an impact to vessel traffic during times when the navigational channel is restricted. However, there will be times throughout the project where vessel traffic is not restricted and traffic will be able to freely flow through the main navigational channel. Furthermore, notification of the waterway restrictions will be made by the contractor, Mobile Dredging and Pumping Co. Additionally the New Jersey Department of Transportation, Office of Marine Resources, will be conducting outreach to the local community. Notification of the safety zone and waterway restrictions will be made by the COTP via marine safety broadcast using VHF-FM channel 16 and through the Local Notice to Mariners.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Delaware Bay has determined that potential hazards are associated with dredge piping and dredge operations from October 1, 2016, through October 31, 2016. The rule is necessary to promote maritime safety and protect vessels from the hazards of dredge piping and dredge operations.

The rule will have an impact to vessels transiting through the Shark River main navigational channel, from latitude 40° 10' 53.2579"N, longitude 074° 01' 52.6231"W, bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40° 11' 21.0139"N, longitude 074° 01' 53.1749"W" as vessels will be unable to transit the main navigational channel during times when dredging operations are being conducted. This restriction is necessary to ensure the safety of life and protect vessel from dredge piping and dredge operations.

#### **IV. Discussion of the Rule**

On September 1, 2016, dredging began on a portion of the Shark River in Neptune City, NJ. The Captain of the Port, Delaware Bay, determined that the hazards associated with dredge piping and dredge operations in the main navigational channel created the need for a safety zone to ensure safety of vessels transiting this portion and for workers engaged in dredge piping and dredging operations of the Shark River.

The safety zone closed the main navigational channel on all the navigable waters on the Shark River from latitude 40° 10' 53.2579"N, longitude 074° 01' 52.6231"W, bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40° 11' 21.0139"N, longitude 074° 01' 53.1749"W"; during times of dredging. Dredging for the main navigational channel was scheduled from September 1, 2016, through September 30, 2016, from 9 a.m. to 9 p.m. Monday through Thursday. The Coast Guard is extending the effective period for the temporary safety zone through October 31, 2016. Entry into, transiting, or anchoring within this portion of Shark River during these times is prohibited. These coordinates are based on the World Geodetic System 1984 (WGS 84) horizontal datum reference.

The channel will be open from October 1, 2016, through October 31, 2016, each week from 9 p.m. to 9 a.m., Monday through Thursday. Vessels may transit freely during these times, and vessels are requested to contact the dredge via VHF-FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the main navigational channel.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive order

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This finding is based on the limited size of the zone and duration of the safety zone. Although the main navigational channel of this portion of the Shark River will be closed for periods of time throughout the dredging operation, there are designated times where the channel will be open for vessel traffic and traffic will be able to flow freely. Vessels will only be affected 84-hours weekly, from 9 a.m. to 9 p.m. Monday through Thursday, during October 2016. The safety zone and channel closure will be well publicized to allow mariners to make alternative plans for transiting the affected area.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

It is expected that there will be some disruption to the maritime community. Before the effective period, the Coast Guard, Mobile Dredging and Pumping Co., and New Jersey Department of Transportation's Office of Marine Resources will issue maritime advisories, widely available to users of the Shark River, describing times and dates of waterway closures and openings.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management



Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing all the waters from latitude 40° 10' 53.2579"N, longitude 074° 01' 52.6231"W, bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40° 11' 21.0139"N, longitude 074° 01' 53.1749"W", in the Shark River, in Neptune City, NJ. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as set forth below and extends the effective period for § 165.T05-0824 from

September 30, 2016, through October 31, 2016.

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Effective September 30, 2016, revise § 165.T05-0824 to read as follows:

§ 165.T05-0824 Safety Zone, Dredging; Shark River, NJ.

(a) Regulated areas. The following areas are safety zone: All waters from latitude 40° 10' 53.2579"N, longitude 074° 01' 52.6231"W, bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40° 11' 21.0139"N, longitude 074° 01' 53.1749"W", in the Shark River, in Neptune City, NJ. These coordinates are based on the World Geodetic System 1984 (WGS 84) horizontal datum reference.

(b) Regulations. The general safety zone regulations in § 165.23 apply to the safety zone created by this temporary section.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone described in paragraph (a) of this section while it is subject to enforcement, unless authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zone must contact the Captain of the Port, Delaware Bay, or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215-271-4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) Vessels may freely transit this portion of the Shark River from 9 p.m. to 9 a.m. Monday through Thursday. Vessels are requested to contact the dredge via VHF-FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the main navigational channel during times of channel openings.

(5) This section applies to all vessels except those engaged in the following operations: enforcing laws, servicing aids to navigation and emergency response vessels.

(c) Definitions. As used in this section:

Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement periods. This section will be enforced weekly from 9 a.m. to 9 p.m. Monday through Thursday, through October 31, 2016.

Dated: September 27, 2016.

Benjamin A. Cooper,

Captain, U.S. Coast Guard,

Captain of the Port Delaware Bay.

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